No. 82-948

Office-Supreme Court, U.S.
FILED
OCT 26 1982
ALEXANDER L. STEVAS,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

BOHUMIL J. DUSANEK,

Petitioner,

vs.

JOHN O'DONNELL, M.D., and the BOARD OF EDUCATION OF THE CITY OF CHICAGO,

Respondents.

RESPONDENTS' REPLY TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Docket No. 80-1986

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STATEMENT OF FACTS

The statement of facts submitted by the plaintiff-petitioner is argumentative, includes matters not in the record,[1] omits

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[1] For example, Board Rule 4-41 Absence Without Leave —Members of the Teaching Force (cited at page 9 and appendix page 13a of petitioner's brief) is raised for the first time in this case. This is an example, unfortunately repeated throughout petitioner's brief, of not only raising new matters but also citing statutes and rules which are totally inapplicable. During the period covered by this lawsuit, Mr. Dusanek was on sick leave and therefore could not have been "absent without leave."

matters which are in the record and is generally a biased presentation of the evidentiary material contained in the record. Accordingly, defendants-respondents submit the following summary.

Bohumil J. Dusanek is a tenured school teacher employed by the Board of Education of the City of Chicago. He can only be removed for cause and then only after a full evidentiary hearing, and judicial review of any agency adverse decision may then be had, Ill. Rev. Stat. ch. 122 § 34-85 (1975).

Under Illinois Statute, Ill. Rev. Stat. ch. 122 § 24-5 (1975), the school board may from time to time require a health examination of its employees to be performed by a licensed physician and shall pay the expenses thereof from school funds. Complementing this is Board Rule 4-44 which provides that the General Superintendent of Schools may require the teacher to submit to a health examination when it appears that the teacher has a health problem which may impair his efficiency.

On March 2, 1977, Mr. Dusanek complained to his high school principal, Dr. James Maloney, that a new girl in his class was there to cause disruption. He knew this because she was in his class approximately 10 years earlier and associated with a heavy set 6'6" woman in bib-overalls. No one had ever seen this woman because she always disappeared when Mr. Dusanek went to the office to complain. Dr. Maloney noted that during this conversation Mr. Dusanek was uneasy and apprehensive.

Dr. Maloney verified that the student complained of was only 16 or 17 years old and he interviewed two teachers who related bizzare experiences with Mr. Dusanek. These matters verified Dr. Maloney's initial impression that Mr. Dusanek seemed to be experiencing some psychological impairment. After receiving his District Superintendent's approval, he requested that the General Superintendent direct Mr. Dusanek to report for a Rule 4-44 health examination. After personal

consultation between Dr. Maloney and Teacher Personnel Director Raymond Principe, the General Superintendent did so.

Insofar as is pertinent to this action, Dr. John O'Donnell, Staff Psychiatrist, examined Mr. Dusanek on March 28, 1977 and in July, 1977. During the examinations, Dr. O'Donnell recognized the classic symptoms of mental illness (paranoid personality) and determined that this interfered with Mr. Dusanek's efficiency as a teacher, particularly that he was exhibiting unreasonable hostilities towards one of his students and could become violent. At the conclusion of the first examination in March, Dr. O'Donnell discussed the teacher's specific problems but did not tell the teacher that he had a paranoid personality. Dr. O'Donnell also requested releases to obtain medical records; Mr. Dusanek signed the release for his orthopedic surgeon's records but he refused to sign the release for his psychiatrist's records. The July examination proceeded in a similar manner, except that this time Mr. Dusanek did sign the release for the psychiatrist's records.

Dr. O'Donnell informed the personnel department that Mr. Dusanek had failed the health examination, and Mr. Principe wrote to Mr. Dusanek. This letter informed the teacher of the results, suggested that he take an illness leave of absence in order to protect his teacher tenure and job benefits, and concluded:

> Please be advised that if you fail to request a leave of absence within ten business days from the date of this letter, it will be recommended that your services be terminated in accordance with State Statute.

Upon receipt of this letter, Mr. Dusanek consulted with his attorneys and thereafter executed the leave of absence request. Mr. Dusanek testified that he executed this form in order to protect his job.

Mr. Dusanek wrote to Dr. Abrams (the Board's medical director, who had just retired) and asked why he failed the

examination; however he received no reply. Mr. Dusanek then wrote to Mr. Principe, incorporating the content of the Abrams letter and asking for another health examination. Mr. Principe responded by scheduling the July examination, which Mr. Dusanek also failed.

Mr. Dusanek has been under treatment since 1973 by a private psychiatrist, Dr. Garth W. Smith, for paranoid personality with conversion features (unreasonable hostility reactions to stress, internal pain, or distress; unreasonable belief of being abused or misused by other persons; together with physical complaints having no organic basis but resulting from mental problems). At Mr. Dusanek's request, Dr. Smith wrote a short "To whom it may concern" letter, which Dr. O'Donnell found to contain insufficient medical history to permit an evaluation. After Mr. Dusanek executed a release, Dr. Smith provided a more comprehensive medical history and treatment. He advised of his patient's illness (which confirmed Dr. O'Donnell's diagnosis), the nature of the therapeutic treatment and his opinion that it was not a cooperative venture. He also stated Mr. Dusanek had withdrawn group health insurance claim forms because they would reveal to his employer that he was "paranoid." Although Mr. Dusanek's condition was essentially stable, he noted a deterioration in the teacher's mental state in May, 1977. Dr. Smith testified that he lacked sufficient information of Mr. Dusanek's work environment and therefore could not give a professional opinion as to any effect Mr. Dusanek's state of health would have on his job performance.

Pursuant to the order of District Judge George N. Leighton directing the parties to use Board Rules 4-33[2] and 4-19, the

[2] Perhaps in error, petitioner refers to Article 33 of the union contract rather than Board Rule 4-33 (petitioner's brief, page 8). Article 33 does concern sick leaves, but its sick leave provisions apply only to non-tenured teachers, *i.e.*, "a full time-basis (FTB) temporarily certified teacher." Other sections of this article pertain to leaves

(Footnote continued on following page)

plaintiff retained Dr. John W. Hanni as an independent psychiatrist to examine Mr. Dusanek. He reported that he found the patient's present mental condition characterized by the existence of bizzare delusions of a persecutory nature, illogical thinking, inappropriate affect, a loosening of mental associations, a tendency to be argumentative, at times violent, doubts as to gender identity, denial of neurological illness, and rationalization of his medicines as being for diet control. This condition has been present since well prior to March, 1977. Mr. Dusanek suffers from a paranoid schizophrenic condition which is chronic. He is suspicious, hostile, unreasonably angry and feels he may have to resort to violence. Since Mr. Dusanek continues under private care and has structured his existence around the relative protection of his household, his condition has stabilized.

A Grievance Procedure is part of the contract between the Board of Education and Mr. Dusanek's union. Mr. Michael Wrenn, Director of Employee Relations, testified as to the procedure. A grievance, in a work situation, is a violation, misinterpretation or misapplication of a Board Rule or of the terms of the union agreement. A claim that Board Rule 4-44 (Health Examination) had been violated, misinterpreted or misapplied would be grievable. The teacher presents a written complaint and meets with his principal and union delegate. The principal then render a written decision. The agency review process involve the following further protections: (1) hearing before the district superintendent; (2) hearing before Mr. Wrenn; (3) hearing before a three-member board committee; (4) vote by the full board in session; (5) binding

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(Footnote continued from preceding page)

for death of a close relative; leaves to attend conferences, workshops, conventions and meetings; maternity and paternity leaves; travel or study leaves; personal business leaves; and regulation of accumulated leave days. None of this is pertinent to Mr. Dusanek's claim that he was deprived of his property interest in his employment without due process of law.

arbitration at the union's request before the American Arbitration Association. All hearings are *de novo*, the teacher may present evidence and witnesses, and he receives a written report of the findings.

By Statement of Uncontested facts, the parties agree that Mr. Dusanek never utilized the Grievance Procedure to resolve his complaint that Board Rule 4-44 was violated, misinterpreted or misapplied to him. His counsel advised the district judge that they elected to file this lawsuit instead.

The following stipulations were submitted to the jury at the close of testimony:

$69,292.43	Projected gross earnings had the plaintiff not been on a leave of absence.
$ 2,304.94	Actual earnings from other sources during this period.
$ 1,290.72	Moneys actually paid to the plaintiff by the Board of Education as holiday pay during this period.
$10,648.44	Moneys actually paid to the plaintiff by the Board of Education as sick leave pay during this period.

Pursuant to Board Rule 4-33 (petitioner's appendix, pp. 14a-15a) an illness leave of absence shall not be construed as a break in service for any purpose; therefore, employee benefits are preserved (such as, seniority, pension, health and dental insurance, deferred tax annuity programs, holiday pay, etc.)

Following trial, the jury rendered a verdict for money damages against the Board of Education and Dr. O'Donnell and found in favor of defendants Hannon and Principe. The district court subsequently denied plaintiff's prayer for a permanent injunction seeking to reinstate the teacher in his position. Pursuant to 42 U. S. C. § 1988, the district court awarded attorney's fees to Mr. Dusanek and denied attorney's fees to Dr. Hannon and Mr. Principe. On appeals, the Seventh Circuit reversed the jury's verdict, vacated the award of attorney's fees to the plaintiff, and affirmed the denial of injunctive relief to the plaintiff and the denial of attorney's fees to the defendants. It also awarded the defendants-appellants the customary costs of appeal in both appeals.

ARGUMENT

I.

THE PETITION FOR A WRIT OF CERTIORARI IS UNTIMELY

The maximum allowable time for petitioning for a Writ of Certiorari under 28 U. S. C. 2201(c) is 90 days, and plaintiff-petitioner has failed to meet this requirement.

Decided below were not one but two appeals from the decisions of the U. S. District Court, docketed respectively as 80-1988 and 81-1527. As described by the opinion of the Seventh Circuit, these appeals were (petitioner's appendix, p. 3a):

> . . . On May 6, 1980, the jury rendered a verdict in favor of the appellee and against the Board and Dr. O'Donnell only. Subsequently, on the appellee's motion for a permanent injunction . . . the court denied the appellee's motion . . .
>
> In No. 80-1988, the appellants are seeking a reversal of the jury verdict and the district court's rulings on the post-trial motions for attorney's fees. Consolidated with that appeal is the appeal from the district court's denial of the appellee's motion for permanent injunctive relief in No. 81-1527.

On April 26, 1982, the Court of Appeals rendered its decision. Thereafter, Dusanek filed a timely petition for a rehearing in 81-1527, but he did not do so in 80-1988. The mandate in 80-1988 issued on May 17, 1988 thereby severing the appeals. Following the denial of Dusanek's petition for a rehearing (petitioner's appendix, p. 11a), the mandate in 81-1527 was issued on July 7, 1982. (see respondents' appendix).

If plaintiff were petitioning for a writ in 81-1527, this petition would be timely. However, he is not. The entire thrust of his petition is to ask this court "to reinstate the judgment of

the United States District Court in his favor."[3] Of the four initial defendants therein, plaintiff petitions against only the Board of Education and O'Donnell as respondents, the losing defendants in 80-1988. That judgment was entered in only the portion of the appeal docketed as 80-1988.

Appeal 81-1527 deals only with the denial of injunctive relief (petitioner's appendix, p. 3a), and plaintiff-petitioner does not ask for any relief from the determination in that appeal. In fact, although the plaintiff received an adverse decision therein, he never appealed from the trial court's ruling. 81-1527 was actually presented to the Circuit Court of Appeals by all four defendants in order that the entire record would be available to the court for its consideration.[4]

The Petition for a Writ of Certiorari to the Seventh Circuit in docket number 80-1988 has been filed 153 days after that court decided the appeal; the plaintiff filed no intervening petition for rehearing therein. Plaintiff-petitioner is trying to "tail-end" his 80-1988 petition to the other appeal docket; this he cannot do. This petition is well beyond the 90 day permissable period and should be refused.

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[3] This is printed at petitioner's appendix, p. 1a, and is the court's entry of judgment on the jury's verdict. The only other favorable judgment received by the plaintiff was the court's award of attorney's fees, 42 U. S. C. § 1988.

[4] For example, upon oral testimony both the plaintiff's psychiatrist (Dr. Smith) and the defendant, Dr. O'Donnell, testified as to the plaintiff's paranoid condition; only Dr. O'Donnell testified to the impact on job performance. The report of Dr. Hanni, an independent psychiatrist retained after the discharge of the jury, confirmed Dr. O'Donnell's findings of Mr. Dusanek's inability to function as a teacher. However, his report was contained in 81-1527.

II.

THE PETITION PRESENTS NO ISSUE OF IMPORTANCE WHICH THIS COURT IS REQUIRED TO RESOLVE

Having undertaken, with the advice of counsel, an avoidance of all agency remedies and an election to file a civil rights court action instead to claim that those remedies were denied to him, Mr. Dusanek now wishes to defend and justify those strategic mistakes by claiming that exhaustion of administrative remedies is not required, and that his action should not be barred by his failure to use available state remedies.[5] It is clear from the record that the plaintiff deliberately spurned the same agency due process which he claims was denied to him.

In the beginning, plaintiff avoided due process by selecting a procedure that was non-adversarial in nature, the leave of absence. Plaintiff did so with the advice of counsel and he testified that this choice was intended to protect his employment. If he really believed, as he claimed in this action, that either alternative produced a property deprivation, then he could have had his due process hearing by refusing the leave of absence and invoking the proceedings required by state statute.

Next, he declined to initiate a grievance to test his claim that the Rules of the Board of Education did not permit an involuntary leave of absence. While somewhat less formal than state statute, this procedure is no less adequate. The plaintiff does not question this procedure, he only says that he decided to file the lawsuit instead.

Finally, he never asked for the independent medical evaluations which presumably would have vindicated his claim

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[5] The argument thus begins with a fallacy. Even where the exhaustion rule would apply, relief in federal court is not barred, only postponed. See, *e.g.*, the numerous actions initiated *de novo* in the federal courts after agency action under Title VII of the Civil Rights Act of 1964, 42 U.S.C.

that he "was suffering from no physical or mental disability, which would interfere with the performance of his duties as a teacher." (complaint, Count I, par. 21). Yet, though his treatment under his personal psychiatrist for the previous four years was not a cooperative venture, he did have some insight into his illness and treatment. No doubt he feared the ultimate finding by the independent psychiatrist of significant job impairment.

It cannot be a violation of due process rights to offer a tenured teacher the alternative to a procedure which could lead to his termination for cause.[6] This not only serves the best interests of the teacher, but also of the state. As Judge Pell held herein (petitioner's appendix, p. 7a):

> The Illinois procedure whereby certain school authorities can require teachers who may have medical difficulties to submit to medical examinations obviously serves strong state interests.

In *Tetmeier* v. *Board of Education of School District 149*, 5 Ill. App. 3d 982, 284 N. E. 2d 380, 382 (1972), the state court presented a more detailed rational of the same view:

> In the school setting mental well-being of teachers can be even more important than physical well-being. We do not believe that the legislature failed to perceive this when the

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[6] At page 10 of Petitioner's brief, he cites to Ill. Rev. Stat. ch. 122 ch. § 10-22.4 which was amended in 1975 to provide, "Temporary mental or physical incapacity to perform teaching duties, as found by a medical examination, is not a cause for dismissal." This is a limitation on the powers of a board of school directors of a school district having a population of less than 1000 inhabitants and not governed by any other section of the act. The Board of Education of the City of Chicago is a school district with a population of greater than 500,000 and is governed primarily by section 34 of the School Code. Thus, the section cited by plaintiff has very limited application in the State of Illinois and has no application to a school district with a population in excess of 500,000.

> statute [Ill. Rev. Stat. ch. 122 § 24-5] was enacted. Any other construction would leave a school board with no recourse against a teacher who displayed tendencies toward mental instability, and there is no reason to wait until behavior becomes so aberrational as to itself be grounds for dismissal for cause before any action is taken.

In Mr. Dusanek's case, both the Board of Education's Medical Department and Personnel Department, after investigation and health examination perceived that the teacher was experiencing mental instabilities which interfered with his efficiency as a teacher. The Board of Education recommended that he take an illness leave of absence, whereby he would have an opportunity to restore his health and teaching efficiency. It is a fact that the Board of Education did offer to forbear of its right to file charges; that Mr. Dusanek did take his leave of absence; and that the Board of Education did forbear, to the benefit of the teacher.

In general, a party's procedural due process rights are not violated when he knowingly and voluntarily elects one of two or more mutually exclusive remedies, *Reynolds* v. *United States*, 454 F. 2d 1368, 1377 (Ct. Cl., 1972). For example, in *Competello* v. *Jones*, 267 F. 2d 689 (D. C. Cir., 1959), the plaintiff asked for relief when she resigned after agency officials advised her that they intended to file charges for separation from the service. The court held that in view of the plaintiff's election, the agency action was not reviewable.

Dusanek v. *Hannon* is not an exhaustion of remedies action. It represents a deliberate avoidance of state remedies. At no time did plaintiff claim that these particular remedies were inadequate. In the final analysis, plaintiff has failed to avail himself of his procedural opportunities and, having failed to pursue this hearing and review avenue, he is not now in a position to deny their availability to him. "Due process was not denied—it was waived." *Brooks* v. *Board of Regents of the*

University of Illinois, 90 Ill. App. 3d 591, 592, 413 N. E. 2d 513 (1980). As stated by Judge Pell in his *Dusanek* opinion, after appropriate citations (petitioner's appendix, p. 8a):

> These decisions do not amount to a requirement of exhaustion of remedies as a predicate to a section 1983 claim. Rather, they express the logical proposition that a state cannot be held to have violated due process requirements when it has made procedural protection available and the plaintiff has simply refused to avail himself of them. Because the procedural protections existed, the state cannot be accused of withholding them in a section 1983 suit.

The present action bears a distinct similarity to this Court's 1981 opinion in *Parratt* v. *Taylor*, 451 U. S. 527, 542, 68 L. Ed. 2d, at 433. In that action, a state prisoner purposefully avoided state due process remedies and instead filed a section 1983 action. Citing with approval Justice Stevens' opinion (as a Circuit Judge) in *Bonner* v. *Coughlin*, 517 F. 2d 1311, 1319 (7th Cir., 1975), the Court quoted:

> We may reasonably conclude, therefore, that the existence of an adequate state remedy to redress property damage inflicted by state officers avoids the conclusion that there has been any constitutional deprivation of property without due process within the meaning of the Fourteenth Amendment.

Plaintiff presents two interrelated arguments: first, that no agency remedies were available to him; second, that he need not use those available remedies. But the latter contradicts the former. Remedies were available to Mr. Dusanek, and had he and his counsel used them, he would have received all the process due him. Instead, he and his counsel avoided them. This is the entire basis of the lawsuit. Due process was not denied, it was waived. This Court has already once reached this conclusion, and accordingly it no longer becomes an issue to review again only one year later.

Plaintiff's claim is not that the Circuit Court of Appeals decision erred in holding that the state did not deprive him of due process, but rather that the Court deprived him of a substantial money judgment by its decision.

III.

OTHER ISSUES RAISED BY PETITIONER

Addressing briefly other arguments raised by the plaintiff-petitioner:

Mr. Dusanek is unquestionably mentally ill to the point that it affects his performance as a teacher. He was aware of this for at least four years prior to his examination by the Board of Education physician. His own physician confirms the illness; the independent physician does so in even stronger terms. Of what merit can it be to argue that Dr. O'Donnell's procedures were careless, that his input was inadequate, that his consultation with the teacher was insufficient, while carefully avoiding the obvious fact that Dr. O'Donnell's diagnosis of paranoia was a correct one, sustained by all other examining physicians.

It is an evidentiary fact that Mr. Dusanek testified both a) that he knew approximately two weeks prior to his examination that part of it would be psychiatric, and b) he never knew of the psychiatric examination until he met the examining physician. His counsel prefers the version which best suits his argument. However, this is a factual issue, not a legal issue.

Dr. O'Donnell's role is as a medical factfinder and not as a decision-maker. Nonetheless, the psychiatrist *did* discuss with Mr. Dusanek following the examination, the teacher's particular problems and recommended continued counseling by Dr. Smith. Mr. Dusanek was well aware from this discussion and his prior treatment why he failed the health examination. He also tried twice to withhold this information from his employer.

first, by withdrawing a health insurance claim for treatment by Dr. Smith; second, by initially refusing to authorize the release of his records from Dr. Smith. The picture of an uninformed employee has no validity.

The Board of Education did not coerce a leave of absence from Mr. Dusanek. The letter to him by Mr. Principe states only that charges would be *recommended*. It is by no means certain that if Mr. Principe so recommended, that the General Superintendent would file those charges, or that the Board would adopt them, or that a hearing would sustain them, or that the courts would affirm them. Mr. Dusanek counseled with his attorneys; thereafter he selected the leave of absence for the purpose of protecting his employment. The lower court found, on the facts, that this selection by Mr. Dusanek was not coerced. Other than the plaintiff's self-serving conclusion, there is no evidence to the contrary.

It is doubtful that the jury found that there was no reason for plaintiff to take a leave of absence—in addition to the evidence, they saw before them a man who was confused, angry, rambling and at times incoherent, moods which can be readily discerned from his answers recorded in the trial transcripts. But the jury reaches its verdict on the law as it is presented in the instructions. In this instance, the district judge approved a plaintiff's instruction (no. 24) which deprived defendants of the significant and viable defense that plaintiff had waived his claim of denial of due process by refusing to use available due process.

CONCLUSION

For the foregoing reasons, defendants pray that this Court deny the Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

For The Seventh Circuit

219 South Dearborn Street

Chicago, Illinois 60604

Thomas F. Strubbe
Clerk
312-435-5850

May 17, 1982

Mr. H. Stuart Cunningham
Clerk, U.S. District Court
219 South Dearborn Street
Chicago, Illinois 60604

Re: BOHUMIL J. DUSANEK, Plaintiff-Appellee,
vs.
JOHN P. O'DONNELL and BOARD OF EDUCATION OF THE CITY OF CHICAGO, a body politic and corporate, Defendants-Appellants.
U.S.C.A.-7 No. 80-1988
District Court No. 77-C-3985

Dear Clerk:

Herewith is the mandate of this Court in the above-entitled appeal. "A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate." (F.R.A.P.41(a)). I am also returning the original record of your District Court, which was transmitted to this office for use on appeal.

Please acknowledge receipt on the enclosed copy of this letter.

Contents of Record:
Record being used on
other appeal. (No. 81-1527)

Sincerely yours,
THOMAS F. STRUBBE, Clerk

By: /s/ Lupe Calderon,
Lupe Calderon,
Deputy Clerk

Date:

Received above mandate and record from the clerk of the United States Court of Appeals for the Seventh Circuit.

_____
Clerk of District Court

Copies mailed to:
Michael J. Murray, 228 N. LaSalle, Rm 312, Chgo, IL 60601
Thomas P. Brown, 100 W. Monroe, Chgo, IL 60603
Wayne B. Giampietro, 134 N. LaSalle, Chgo, IL 60602

Note to Counsel:

If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

219 South Dearborn Street

Chicago, Illinois 60604

Thomas F. Strubbe
Clerk
312-435-5850

July 7, 1982

Mr. H. Stuart Cunningham
United States District Court
219 S. Dearborn
Chicago, IL 60604

Re: BOHUMIL J. DUSANEK, Plaintiff-Appellee,
vs.
JOSEPH P. HANNON, et al., Defendants-Appellants
U.S.C.A.-7 No. 81-1527
District Court No. 77 C 3985

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Please acknowledge receipt on the enclosed copy of this letter.

Contents of Record:
one vol pldgs
3 vol trans
3 vol depositions
Medical report of plaintiff
(in brown envelope)

Sincerely yours,
THOMAS F. STRUBBE, Clerk

By: /s/ Dolores Rosellini
Dolores Rosellini
Deputy Clerk

Date:

Received above mandate and record from the Clerk of the United States Court of Appeals for the Seventh Circuit.

_____
Clerk of District Court

Copies mailed to:
Michael J. Murray, Law Dept Bd. of Education of the City of Chicago 228 N. LaSalle Street, Chicago, Ill 60601
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IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 81-1527

BOHUMIL DUSANEK,
Plaintiff-Appellee,

vs.

JOSEPH P. HANNON, RAYMOND C. PRINCIPE, JOHN O'DONNELL, M.D., and the BOARD OF EDUCATION OF THE CITY OF CHICAGO,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable
GEORGE N. LEIGHTON,
Judge Presiding.

PETITION FOR REHEARING

TO THE JUSTICES OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT:

Plaintiff-Appellee Bohumil Dusanek respectfully requests the Court to grant him rehearing herein, and upon such rehearing to affirm the decision of the United States District Court for the Northern District of Illinois. In support of such request, Plaintiff respectfully suggests that the court has misapprehended and overlooked the controlling evidence in the record in this cause.

The Court recognizes, as cannot be disputed, that Plaintiff has a property in his tenured position as a school teacher for the